

111TH CONGRESS  
1ST SESSION

# S. 1094

To amend the Internal Revenue Code of 1986 to provide for an energy carrier production tax credit, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2009

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for an energy carrier production tax credit, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Renewable Energy Al-  
5       ternative Production Act” or the “REAP Act”.

6       **SEC. 2. CREDIT FOR PRODUCTION OF RENEWABLE EN-**  
7       **ERGY.**

8       (a) IN GENERAL.—Section 45 of the Internal Rev-  
9       enue Code of 1986 is amended by adding at the end the  
10      following new subsection:

1 “(f) CREDIT ALLOWED FOR PRODUCTION OF NON-  
2 ELECTRIC ENERGY.—

3 “(1) IN GENERAL.—The credit allowed under  
4 subsection (a) shall be increased by an amount equal  
5 to the product of—

6 “(A) the dollar amount determined under  
7 paragraph (2), and

8 “(B) each million British thermal units  
9 (mmBtu) of qualified fuel which is—

10 “(i) produced by the taxpayer—

11 “(I) from qualified energy re-  
12 sources, and

13 “(II) at any facility during the  
14 10-year period beginning on the date  
15 such facility was placed in service,

16 “(ii) not used for the production of  
17 electricity, and

18 “(iii) sold by the taxpayer to an unre-  
19 lated person during the taxable year.

20 “(2) DOLLAR AMOUNT.—The dollar amount de-  
21 termined under this paragraph shall be the amount  
22 determined by the Secretary to be the equivalent, ex-  
23 pressed in British thermal units, of the credit al-  
24 lowed under subsection (a) for 1 kilowatt hour of  
25 electricity.

1           “(3) REDUCTION FOR GRANTS, TAX EXEMPT  
2       BONDS, SUBSIDIZED ENERGY FINANCING, AND  
3       OTHER CREDITS.—Rules similar to the rules of sub-  
4       section (b)(3) shall apply for purposes of paragraph  
5       (1).

6           “(4) DEFINITIONS AND SPECIAL RULES.—For  
7       purposes of this subsection—

8               “(A) QUALIFIED FUEL.—The term ‘quali-  
9       fied fuel’ means an energy product which is  
10      produced, extracted, converted, or synthesized  
11      from a qualified energy resource through a con-  
12      trolled process, including pyrolysis, electrolysis,  
13      and anaerobic digestion, which results in a  
14      product consisting of methane, synthesis gas,  
15      hydrogen, steam, manufactured cellulosic fuels,  
16      or any other form of energy provided under reg-  
17      ulations by the Secretary and which is used  
18      solely as a source of energy.

19           “(B) ALLOCATION OF CREDIT TO PATRONS  
20      OF AGRICULTURAL COOPERATIVES.—Rules  
21      similar to the rules of subsection (e)(11) shall  
22      apply for purposes of paragraph (1).”.

23      (b) CONFORMING AMENDMENTS.—

1           (1) The heading for section 45 of the Internal  
 2       Revenue Code of 1986 is amended by striking  
 3       “**ELECTRICITY**” and inserting “**ENERGY**”.

4           (2) The table of sections for subpart D of part  
 5       IV of subchapter A of chapter 1 of such Code is  
 6       amended by striking “Electricity” in the item relat-  
 7       ing to section 45 and inserting “Energy”.

8       (c) EFFECTIVE DATE.—The amendments made by  
 9       this section shall apply to taxable years beginning after  
 10      the date of the enactment of this Act.

11   **SEC. 3. ENERGY CREDIT FOR ONSITE RENEWABLE NON-**  
 12                           **ELECTRIC ENERGY PRODUCTION FACILITIES.**

13       (a) CREDIT ALLOWED.—Clause (i) of section  
 14      48(a)(2)(A) of the Internal Revenue Code of 1986 is  
 15      amended—

16           (1) by striking “and” at the end of subclause  
 17           (III), and

18           (2) by adding at the end the following new sub-  
 19           clause:

20                           “(V) qualified onsite renewable  
 21                           non-electric energy production prop-  
 22                           erty,”.

23       (b) QUALIFIED ONSITE RENEWABLE NON-ELECTRIC  
 24      ENERGY PRODUCTION PROPERTY.—Subsection (c) of sec-

tion 48 of the Internal Revenue Code of 1986 is amended  
by adding at the end the following new paragraph:

“(5) QUALIFIED ONSITE RENEWABLE NON-  
ELECTRIC ENERGY PRODUCTION PROPERTY.—

“(A) IN GENERAL.—The term ‘qualified  
onsite renewable non-electric energy production  
property’ means property which produces quali-  
fied fuel—

“(i) from qualified energy resources,

“(ii) not used for the production of  
electricity, and

“(iii) used primarily on the same site  
where the production is located to replace  
an equivalent amount of non-renewable  
fuel (determined based on the number of  
British thermal units of non-renewable fuel  
consumed by the taxpayer in the prior tax-  
able year) or to provide energy primarily  
on such site for a use that did not exist  
prior to the later of the date of the enact-  
ment of this paragraph or the date such  
property was placed in service.

“(B) DEFINITIONS.—For purposes of this  
paragraph—

1                   “(i) QUALIFIED FUEL.—The term  
 2                   ‘qualified fuel’ means an energy product  
 3                   which is produced, extracted, converted, or  
 4                   synthesized from a qualified energy re-  
 5                   source through a controlled process, in-  
 6                   cluding pyrolysis, electrolysis, and anaer-  
 7                   obic digestion, which results in a product  
 8                   consisting of methane, synthesis gas, hy-  
 9                   drogen, steam, manufactured cellulosic  
 10                  fuels, or any other form of energy provided  
 11                  under regulations by the Secretary and  
 12                  which is used solely as a source of energy.

13                  “(ii) QUALIFIED ENERGY RE-  
 14                  SOURCES.—The term ‘qualified energy re-  
 15                  sources’ has the meaning given such term  
 16                  by paragraph (1) of section 45(c).

17                  “(iii) TERMINATION.—The term  
 18                  ‘qualified onsite renewable non-electric en-  
 19                  ergy production property’ shall not include  
 20                  any property for any period after the date  
 21                  which is 10 years after the date of the en-  
 22                  actment of the Renewable Energy Alter-  
 23                  native Production Act.”.

24                  (c) EFFECTIVE DATE.—The amendments made by  
 25                  this section shall apply to periods after the date of the

1 enactment of this Act, under rules similar to the rules of  
 2 section 48(m) of the Internal Revenue Code of 1986 (as  
 3 in effect on the day before the date of the enactment of  
 4 the Revenue Reconciliation Act of 1990).

5 **SEC. 4. RENEWABLE NON-ELECTRIC ENERGY PRODUCTION**  
 6 **FACILITIES ELIGIBLE FOR NEW CLEAN RE-**  
 7 **NEWABLE ENERGY BONDS.**

8 (a) IN GENERAL.—Paragraph (1) of section 54C(d)  
 9 of the Internal Revenue Code of 1986 is amended to read  
 10 as follows:

11 “(1) QUALIFIED RENEWABLE ENERGY FACIL-  
 12 ITY.—The term ‘qualified renewable energy facility’  
 13 means a facility which is—

14 “(A)(i) a qualified facility (as determined  
 15 under section 45(d) without regard to para-  
 16 graphs (8) and (10) thereof and to any placed  
 17 in service date), or

18 “(ii) a facility which produces qualified  
 19 fuel (as defined in section 45(f)(4)(A)) which is  
 20 derived from qualified energy resources (within  
 21 the meaning of section 45(f)(4)(B)) and not  
 22 used for the production of electricity, and

23 “(B) owned by a public power provider, a  
 24 governmental body, or a cooperative electric  
 25 company.”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to obligations issued after the date  
3 of the enactment of this Act.

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